

UNITED STATES OF AMERICA
JUDGE ADVOCATE GENERAL
WASHINGTON, D. C.

Apr 11, 1941

Sirs:

By letter of March 3, 1941 (No. P18-2(2)/
14-3(400916)), the Secretary of the Navy authorized
certain changes in Contracts N0d-1430, N0d-1432, N0d-1433,
N0d-1497, N0d-1500, N0d-1503 and N0d-1642.

On page two of the above referenced letter, in
the change under Article 17(d) of the General Provisions,
reference was inadvertently made to claims for reimburse-
ment under paragraphs "(a) or (b)" of that Article when
paragraphs "(b) or (c)" were intended.

It is requested that the change letter be cor-
rected by substituting "(b) or (c)" for "(a) or (b)" under
Article 17(d).

By direction of the Secretary of the Navy

Respectfully,

T. L. GATCH
Acting Judge Advocate General
of the Navy

Federal Shipbuilding
and Dry Dock Company,
Kearny, New Jersey.

CC: BuShips
BuS&A
CompBd (3)
SupShip., Kearny
G.A.O. (Audit Division)

218-2(2)/L-3(40910) P

March 3, 1941

Sirs:

Articles 17(b), (c) and (d) of the General Provisions forming part of Contracts NOD-1430, NOD-1432, NOD 1433, NOD-1497, NOD-1500, NOD-1503 and NOD-1642, provide for reimbursement of the Contractor by the Navy Department of the additional cost incurred in connection with overtime and shift work, where such overtime or shift work has been approved by the Navy Department.

In order to extend these provisions to subcontracts, the Secretary of the Navy hereby authorizes the following changes in the General Provisions of each of the above-mentioned contracts:

Article 17(b):

Line 1 - after the word "contractor", insert the words "or any subcontractor under this contract".

Line 5 - after the word "contractor", insert the words "or such subcontractor".

Line 7 - after the word "contractor", insert the words "or such subcontractor".

Article 17(c):

Line 1 - after the word "contractor", insert the words "or any subcontractor under this contract".

Line 4 - after the word "contractor", insert the words "or such subcontractor".

Line 6 - after the word "contractor", insert the words "or such subcontractor".

... "Contractor", insert
the words "and subcontractor", or any subcontractor
under this contract on whose behalf the contractor
is acting, under Paragraphs (a) or (1)
of this article."

For the sake of clarity, the Secretary of the Navy hereby
further modifies the General Provisions forming part of Con-
tracts N0d-1430, N0d-1432, N0d-1433, N0d-1497, N0d-1500 and
N0d-1503, as follows:

Article 23(a):

Line 9 - after "vessel/vessels", insert "hereby
agrees,"

Article 12(c) of Contracts N0d-1430, N0d-1433, N0d-1497,
N0d-1500, N0d-1503 and N0d-1542, authorizes the Contractor,
with the written approval of the Secretary of the Navy or the
Chief of the Bureau of Ships as his duly authorized represen-
tative, to enter into subcontracts on a cost-plus-a-fixed-fee
basis, on a price adjustment basis, or on such other basis as
may be approved. In order to permit the Contractor to modify
existing subcontracts under this provision, the Secretary of
the Navy hereby modifies each of these contracts as follows:

Article 12(c):

Line 5 - Change the period following the word
"approved" to a semicolon and add the following:

"Similarly, if the contractor shall have ob-
tained in advance such written approval, he may,
by agreement with the subcontractor, change any
subcontract to a cost-plus-a-fixed-fee basis,
a price-adjustment basis, or such other basis as
may be approved."

By letter of February 19, 1941, form of Contract N0d-
1732 for the construction of four Destroyers Nos. DD642 to
648, inclusive, was forwarded to the Contractor for exe-
cution. If this contract has not been forwarded to the Navy

P18-2(2)/21-5(100710) P

Departments, it is requested that the above changes, except for that applying to Article 23(1) of the General Provisions, which has already been made, be inserted in all copies of form of Contract NOD-1732 and the General Provisions forming part thereof, and that appropriate entries covering such insertions be added under Article 14 of the contract and Article 23 of the General Provisions.

It is requested that receipt of this letter be acknowledged.

Respectfully,

James Forrestal

Acting Secretary of the Navy

Federal Shipbuilding and Dry
Dock Company,
Kearny, New Jersey.

CC: BuShips Comp: (2)
 SupShip, Kearny G.A.O. (Audit Div)
 BuC&A

12. The contractor will notify the Department not less than 30 days beforehand of the date of launching each vessel, so that a spot for the vessel may be selected.

Launching.

13. The contractor shall notify the Department in writing at least 2 weeks in advance of the actual date for starting trials and the approximate date for starting trials shall be furnished at least 30 days in advance.

Trials.

14. Each vessel shall be sufficiently strong to carry safely the personnel and the armament, armor, ammunition (including torpedoes and their appendages), equipment, fuel oils, stores, and machinery prescribed by the Department and indicated in the plans and specifications; and the vessel shall be accepted only on condition that she shall, after the trials prescribed in the contract, be found to be strong and well built as defined therein and in strict conformity therewith.

Strength.

15. The contractor shall notify the Department in writing at least 2 weeks in advance of the date proposed for delivery. After one-half of the contract time has expired the contractor shall, on the first day of each succeeding calendar month until the vessel is completed, inform the Department of the estimated date of completion.

Delivery.

16. The contractor shall be informed of all defects and deficiencies developing during the guarantee period specified in this contract and for which it is held responsible, and, wherever practicable, the contractor shall be given an opportunity to inspect the defects and deficiencies for which the contractor is responsible before they are corrected; and the decision of the Secretary of the Navy or the Chief of the Bureau of Ships, as his duly authorized representative, as to the responsibility of the contractor for such defects and deficiencies shall be final and binding on the parties to this contract. The actual cost of correcting all defects and deficiencies for which the contractor is held responsible shall be deducted from the payment to be made in final settlement under this contract, or by refund if the amount reserved is exceeded by the amount to be deducted. *Provided*, That in order to expedite such final settlement, if the work of correcting any of the reported defects and deficiencies shall not have been undertaken when final settlement is otherwise due, the cost of correcting such defects and deficiencies may be determined as a change as provided in this contract, and the amount so determined deducted in lieu of the actual cost of such items in final settlement.

Contractor to be notified of defects

17. (a) During the continuance of the national emergency declared by the President of the United States on September 8, 1939, to exist, but not later than June 30, 1942, unless otherwise provided by law, the provisions of the law prohibiting more than eight (8) hours' labor in any one day of persons engaged upon work covered by this contract shall, in accordance with the Act approved June 28, 1940 (Public, No. 671, 76th Cong., 3d sess.), be suspended.

Eight-hour law

The provisions of Section 303 of the "Second Supplemental National Defense Appropriation Act 1941," approved September 9, 1940 (Public, No. 781, 76th Cong., 3d sess.), are applicable to this contract.

(b) If the contractor, in the interest of National Defense, employs, with the approval of the Department, any person or persons upon the work covered by this contract in excess of eight (8) hours in any one day or of forty (40) hours in any one week, the Department will reimburse the contractor as determined by the Compensation Board for the net excess of the wage rates paid by the contractor over and above the regular wage rates paid by it for such overtime work, and the resultant increased State and Federal Social Security taxes actually paid by the contractor, to the sum of all of which shall be added 8.7 percent as profit thereon.

Overtime.

(c) If the contractor, in the interest of National Defense, employs, with the approval of the Department, any person or persons on work other than day work, the Department will reimburse the contractor as determined by the Compensation Board for the net excess, if any, of the wage rates paid by the contractor over and above the regular day wage rates paid by it for the same type of work, and the resultant increased State and Federal Social Security taxes actually paid by the contractor, to the sum of all of which shall be added 8.7 percent thereof, as profit.

Shift work.

(d) The contractor shall maintain such records as shall be necessary, in order that it may definitely show the amount of money actually paid by it for such overtime work and/or shift work.

(e) The contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

Convict labor.

(f) The contractor will report monthly, and will by agreement require its subcontractors to report in like manner, within 5 days after the close of each calendar month, on forms to be furnished by the United States Department of Labor, the number of persons on their respective pay rolls, the aggregate amount of such pay rolls, the man-hours worked, and the total expenditures for materials. The contractor shall furnish to the Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable: *Provided, however*, That the requirements of this paragraph shall be applicable only for work at the site of the construction project.

Labor statistics.

(g) Pursuant to the provisions of the Act approved June 13, 1934 (40 U. S. C. 276 (b) and (c)), concerning rates of pay for labor, the Secretary of the Treasury and the Secretary of the Interior have jointly promulgated the following regulations (amended March 29, 1937):

Advisory concerning rates of pay for labor.

performance under the contract shall be subject to the following conditions: (1) The rate of pay shall be the rate of pay received by the employee. (2) Overtime shall be one and one-half times the rate of pay for the employee is engaged in work beyond the contract stipulations, shall be required after 40 hours in any one day or after 40 hours in any one week commencing with the single daily total of 40 hours. (3) Employment may be in excess of 8 hours without payment of the overtime rate. (4) The stipulations affecting employees shall be deemed void.

The contractor, subject to the representations and stipulations embodied herein, shall maintain the following records of employment which shall be available for the inspection and transcription of authorized representatives of the Secretary of Labor:

(6) Date of birth of each such employee under 21 years of age.

18. In the performance of the work covered by this contract the contractor, subcontractors, material men, or suppliers shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States; the foregoing provision shall not apply to such articles, materials, or supplies of the class or kind to be used or such articles, materials, or supplies from which they are manufactured, as are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials, or supplies as may be exempted by the head of the Department under the proviso of Title III, section 3, of the Act of Congress approved March 3, 1933 (41 U. S. C.

20. The contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Department the right to terminate this contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fee. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

22. Except as otherwise specifically provided in this contract, if any doubts or disputes arise concerning any question under this contract or as to anything in the plans or specifications, or if any discrepancy appears between said plans or specifications and this contract, the matter shall be referred at once to the Secretary of the Navy for determination; and his decision in the premises (made after a hearing, if desired by the contractor) shall be conclusive and binding upon the parties hereto. No claim arising under this contract will be considered unless submitted in writing to the Secretary of the Navy within six (6) months from the date of the expiration of the guarantee period of the vessel with respect to which the claim arose.

23. (c) As payments are made under this contract and for changes or extras, the parts of the vessel/vessels and materials on account of which such payments shall have been made shall immediately become the sole property of the United States; but this provision shall not be construed as relieving the contractor from the responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Department to require fulfillment of all the terms of this contract. As payments are made, the equipment of materials on hand, but not incorporated in the vessel/

vessels as a part thereof, a lien in favor of the United States shall attach immediately to said materials and shall be discharged on the completion and delivery of the vessel/vessels as to any materials not then incorporated as a part thereof. Said lien is, pursuant to the provisions of the Act approved August 22, 1911, paramount.

(b) No payments shall be made except on vouchers in septuplicate, certified by the Supervisor of Shipbuilding, in such form as shall be directed by the Secretary of the Navy.

(c) All warrants for payments under the contract shall be made payable to the contractor or its order.

No liens.

agrees

Final payments.

Additional security.

Changes.

(d) When payment is to be made under this contract, as a condition precedent thereto, the Secretary of the Navy, in his discretion, may require evidence satisfactory to him, to be furnished by the contractor, showing what, if any, liens or rights in rem of any kind against the vessel/vessels, or the machinery, fittings, or equipment, or the materials on hand for use in the construction thereof, have been or can be acquired for or on account of any work done, or any machinery, fittings, equipment, or material already incorporated as a part of the vessel/vessels, or on hand for use in the construction thereof; but the contractor, for itself and on its own account and for and on account of all persons, firms, associations, and corporations furnishing labor and material for the vessel/vessels, and this contract is upon the express condition that no liens or rights in rem of any kind shall lie or attach upon or against the vessel/vessels or the machinery, fittings, or equipment, or the materials thereof, or any part thereof, or of any of them, for or on account of any work done upon or about the vessel/vessels, machinery, fittings, equipment, or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause, or thing, or of any claims or demands of any kind, except the claims of the Department: *Provided, however*, That, in case by reason of the laws of any State the contractor shall be unable to comply with such express condition, then the Secretary of the Navy may waive such condition or take such other action as he may deem proper under the circumstances.

(e) When all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled by and on the part of the contractor, it shall be entitled within 10 days after the filing and acceptance of its request therefor to receive the special reserve, or so much thereof as it may be entitled to, on the execution of a release, in such form and containing such terms and conditions as shall be prescribed by the Secretary of the Navy, of claims against the United States arising under or by virtue of this contract: *Provided, however*, That the Secretary of the Navy may, in his discretion, make partial payments on account of the special reserve and of any other balances due in advance of final settlement.

24. Should any surety upon the bond for the performance of this contract or upon the bond for payment of persons supplying labor or material hereunder become unacceptable to the Department, or if any such surety shall fail to furnish reports as to his financial condition from time to time as requested by the Department, the contractor shall furnish promptly such additional security as may be required from time to time to protect the interests of the Department and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

25. The following changes were made in these General Provisions before this contract was signed by the parties thereto:

Page 8

Article 23 (d). 9th line - The word "agrees" was inserted after the words "vessel/vessels"

Accepted as part of Navy Department Contract No. 1144

Approved

PRICE ADJUST
CHANGES IN LABO
MATERIAL COSTS

Contract of Naval Force

INTRODUCING AC
APPROPRIA

PROPE
FOURTEEN
OF TH

Contract, entered into
between the Department
and General Motors Corpora
tion, under the laws of
the State of Michigan, hereinafter call
ed "this contract," is as follows:

Article 1. The contract
shall be, at its
best, construct and be
in accordance with the
plans and specifications, inclu
ding the same plans and
specifications as shall be deemed and
approved by the Secretary of the Navy
and the contractor specifically
agrees to the performance
of the contract further spe
cifically under this con
tract, progress of the ship
building machinery shall, after
the contractor.

Article 2. The Secretary of the
Navy in this contract, in
the event of this contract, within
the scope of the plans and
specifications, and no changes shall
be made by the Secretary of the Navy
representative; but nothing
preventing proceeding with the
contract.

Article 3. Except as otherwise
provided in writing
by the Secretary of the Navy
authorized representative,
the contractor shall determine such
costs, and shall determine such
costs, in accordance with the
provisions hereof shall be the
basis of increase or decrease
of matters determined by
the contractor with the work
done under the contract.

Article 4. The increased or
decreased cost of other matters spe
cifically under this con
tract may be determined
by mutual agreement, or
by a board of naval officers
shall determine such costs
shall be computed at the
contract, and shall determine
such costs, in accordance with
the provisions hereof shall be the
basis of increase or decrease
of matters determined by
the contractor with the work
done under the contract.